STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE PROBATE COURT FOR THE COUNTY OF SAGINAW
THE HONORABLE PATRICK J. McGRAW, PROBATE JUDGE, PRESIDING

FLOYD RAU, Personal Representative of the Estate of HERBERT L. VanCONETT, Deceased; JOYCE ANN FLORIP; KAREN JEAN PETERSON; and SANDRA LEE PARACHOS,	Supreme Court File No. 126758
Plaintiffs- Appellants,	
vs.	Court of Appeals File No. 247516
ELIZABETH M. LEIDLEIN,	
Defendant-Appellee.	Saginaw County Probate Court File No. 01-111943-DE-CZ
-and- vs.	
MARIANNE DURUSSEL, Defendant-Appellee.	

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SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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Appellees assert the answer is, "Yes."

The Court of Appeals asserted the answer is, "Yes."

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Appellants assert the answer is, "Yes."

Appellees assert the answer is, "No."

The Court of Appeals asserted the answer is, "No."

SUPPLEMENTAL STATEMENT OF FACTS

There is presently pending before this Court Appellants' Application for Leave to Appeal the July 1, 2004 Judgment of the Court of Appeals which affirmed in part, reversed in part and remanded to the Saginaw County Probate Court, the Trial Court's Order Granting Summary Disposition in favor of Defendants and denial of Plaintiffs' Motion for Summary Disposition.

This case involves the right of a decedent, HERBERT L. VanCONETT, to dispose of property following the death of his wife, ILA R. VanCONETT, under a mutual Will made pursuant to a contract to make a Will. By Order of this Court, dated April 8, 2005, Plaintiffs' Application for Leave to Appeal was considered and the Clerk was directed to schedule Oral Argument on whether to grant the Application or take other peremptory action permitted by MCR 7.302(G)(1). That Order specifically provided that the parties shall include among the issues to be addressed whether:

1. *Herbert VanConett's mutual Will was revocable, and*

2. *If his mutual Will was revocable, the contract to make a Will between Herbert and Ila VanConett became specifically enforceable upon Ila's death as to jointly held property passing to Herbert VanConett by operation of law upon Ila VanConett's death?*

The Order further permitted parties to file Supplemental Briefs within 28 days of the date of that Order. A copy of said Order is attached hereto as **Attachment S**. Appellants incorporate the Statement of Facts set forth in their previously filed Brief in Support of Application for Leave to Appeal. For convenience

purposes, Appellants are attaching as attachments to this Supplement Brief only those Brief Attachments referenced in this Supplemental Brief.

ISSUE I.

WAS HERBERT VANCONETT'S MUTUAL WILL REVOCABLE?

Appellants assert the answer is, "No."

Appellees assert the answer is, "Yes."

The Court of Appeals asserted the answer is, "Yes."

Appellants, in their Brief in Support of Application for Leave to Appeal, addressed this issue as Issue I., *"Did the Trial Court Err in Finding Decedent's Will was Revocable?"* (Pages 10-16 of Brief) Appellants supplement their argument to that issue as follows:

By Michigan Statute, parties may execute contracts not only to make mutual Wills but also not to revoke a Will. **MCL 700.2514** entitled, *Contracts Concerning Succession*, provides as follows:

> *"Sec. 2514. (1) If executed after July 1, 1979,* ***a contract to make a will or*** *devise,* ***not to revoke a will*** *or devise, or to die intestate may be established only by 1 or more of the following:*
>
> *(a) Provisions of a will stating material provisions of the contract.*
>
> *(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.*
>
> *(c) A writing signed by the decedent evidencing the contract.*
>
> *(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."* (Emphasis Added)

In the instant case, the VanConetts had executed separate but mutual Wills on March 6, 1989. Each Will contained a reciprocal contract provision. Specifically, the Will of HERBERT

L. VanCONETT contained the following provision:

> *"I hereby expressly acknowledge that this Will is made pursuant to a contract or agreement entered into between my wife, ILA R. VanCONETT, and myself for the purpose of disposing of all our property, whether owned by us as joint tenants, as tenants in common or in severalty, in the manner hereinabove in this, my Last Will and Testament, provided, and* ***I expressly declare that in the event my wife, ILA R. VanCONETT, shall predecease me, then and in that event, this my Last Will and Testament shall be irrevocable.***" (Emphasis Added) (Attachment H)

The Court of Appeals in its decision stated:

> "We conclude that the probate court erred in finding no contract existed. A review of the wills reveal and clearly express the VanConett's intent to enter a contract. Both wills state, 'I hereby expressly acknowledge that *this Will is made pursuant to a contract or agreement*' [Emphasis Added] Each will then states the material provisions of the contract, that the couple would dispose of their property in the manner expressed in their wills and that the surviving spouse's will would become irrevocable at the first spouse's death. Specific bequests present in each will provide additional contract provisions, and each will was signed. After review of the wills in light of applicable statutory and case law, we conclude that the VanConett's did create a contract to make will." (See Pages 2-3)

A review of both Wills also reveal and clearly express the VanCONETT's intent that the surviving spouse's Will shall become irrevocable upon the first spouse's death. HERBERT L. VanCONETT's Will specifically states:

> *"... **I expressly declare that in the event my wife, ILA R. VanCONETT, shall predecease me, then and in that event, this my Last Will and Testament shall be irrevocable.***" (Emphasis Added) (Attachment H)

Similarly, the Will of ILA R. VanCONETT contains the following provision:

> *"... **I expressly declare that in the event my husband, HERBERT L. VanCONETT, shall predecease me, then and in that event, this my Last Will and Testament shall be irrevocable.***" (Emphasis Added) (Attachment I)

There is no dispute that ILA R. VanCONETT died before her husband. At that point, HERBERT's Will became irrevocable.

MCL 700.2514(1) specifically authorizes the VanCONETTs the right to contract not to revoke their Wills and the VanCONETTs exercised that right as evidenced by their specific will provisions.

Appellants previously cited ***Foulks v. State Savings Bank, 362 Mich 13; 106 NW2d 221 (1960)*** in support of their position that the VanCONETT's Wills were irrevocable. (Brief, Pages 13-14) In that case, as in the instant case, a husband and wife entered into separate but mutual Wills which had been prepared and executed at the same time. The wife died first and after her death, the husband executed a second Will disavowing the first Will. Plaintiff, the son and beneficiary under the first Will, filed suit to establish and enforce a mutual will contract which contract he asserted was made for his benefit by the two first mentioned instruments. In finding the Foulks to have executed mutual Wills incorporating a contract obligating the survivor of them to make a devise of their property at the death of one of them to their son, the Court stated:

> *"The 2 instruments, examined together as they should be, disclose clear intent of John and Annie to contract in such manner as to make* ***both instruments irrevocable*** *from and after the death of either."* (Page 16) (Emphasis Added)

The Court of Appeals, in its Opinion, stated on Page 3:

> "Plaintiffs contend that the probate court erred in finding that the decedent's will was revocable because the VanConetts clearly expressed an intent in their wills that the surviving spouse's will would be irrevocable after the first spouse's death. When parties enter a contract to make a will, the contract, rather than the will itself, becomes irrevocable by the survivor after the death of a party. *Schondelmayer, supra*, at 723, quoting *Keasey v Engles*, 259 Mich 178, syllabus; 242 NW 878 (1932). Thus, the decedent had the right to revoke his will but he could not revoke the parties' contract. So to the extent that any subsequent wills contradicted the contract, plaintiffs have a right to seek specific performance of the

agreement. Therefore, the Probate Court did not err in finding the decedent's will was revocable."

The Court's reliance on ***Schondelmayer v. Schondelmayer, 320 Mich 565; 31 NW2d 721 (1948)*** and ***Keasey v Engles*, 259 Mich 178; 242 NW 878 (1932)**, is misplaced. Both ***Schondelmayer, supra***, and ***Keasey, supra***, are factually different. The language of the joint mutual Wills in both those cases **did not** expressly state that the joint Will would become irrevocable upon the death of the first spouse. The VanConett's Wills do contain such language.

In ***Keasey, supra***, Leverett Clapp and Amanda Clapp, husband and wife, executed a joint Will on March 15, 1928. That Will provided that upon the death of the first of them and after payment of debts and charges, the entire estate would go to the survivor and upon the death of the survivor, the residue, with the exception of four money bequests to relatives, would go to their daughter-in-law, Emma Clapp. Leverett died in 1929. Emma died testate February 13, 1931. Ten days later, on February 23, 1931, Amanda Clapp executed a Codicil to the joint Will revoking the legacy to Emma and making new devises. Amanda died March 9, 1931. The executor of Emma Clapp's Estate filed suit against the executor of Amanda Clapp's Estate seeking specific performance of the contract to make a joint Will.

Interestingly, the Court started out with the following assumption, "We will assume that the instrument is a joint and mutual will executed in pursuance to contract between Leverett and Amanda Clapp, and that **Emma, if living, would be entitled** to specific performance of the contract and **to take under the will.**" (Page 180)

(Emphasis Added) However, because Emma had predeceased Amanda, there were two issues before the Court: (1) whether a divisible interest in the estate **vested** in Emma during her lifetime, and (2) whether the legacy to Emma lapsed at her death. (Page 181) In answering both questions, "No," the Court ruled that the interest of Emma as a beneficiary in the estate does not vest until the death of the surviving spouse. As the Court stated:

> *"The will purported to give nothing to Emma Clapp at the death of Leverett. By its plain terms, the whole estate then devolved upon Amanda... Consequently no interest in the estate could vest in Emma until Amanda's death.*
>
> *It is the general rule, obtaining also in this State, that the death of a legatee prior to the death of testator cause the legacy to lapse... Emma having predeceased Amanda, her legacy lapsed, her executor has no interest in the estate and cannot maintain the bill."* (Pages 182-183)

It was in the context of those facts the Court stated:

> *"The rather common expression that a joint and mutual will is irrevocable by the survivor, after the death of one party to it, is not technically and legally correct.* ***It is the contract to make the will, not the will itself, which is irrevocable.*** *The contract is irrevocable because a court of equity, under its fraud and trust jurisdiction, will decree its specific performance. Such decree incidentally, although by indirection, enforces the will and so the latter often is called irrevocable...* ***The distinction is important because the estate is conveyed by the will itself, not by the contract to make a will, and, consequently, no claim of vesting under the will can be laid upon the ground of its irrevocability.*** *Estates are vested under a joint and mutual will in the same manner as under ordinary wills.* ***It is only the right of action to enforce the contract,*** *if anything,* ***which vests in the beneficiary at the death of one of the testators.***" (Pages 181-182) (Emphasis Added)

As such, it is evident that the Court was discussing the issue of a Will's revocability in the context of when the rights of a Will contract beneficiary vest. Applying the law as set forth in ***Keasey, supra***, to the facts of the instant case produces the following result:

(1) Upon the death of ILA VanCONETT, Plaintiffs FLORIP, PETERSON

and PARACHOS, as named contract beneficiaries, had the vested right to maintain a cause of action against HERBERT VanCONETT to specifically enforce the contract and/or enjoin breaches of the parties' contract. That right of action did not include a cause of action to receive any property for themselves because at that time, they had no vested interest in the property itself. At that time, per the contract provisions, the property went to the surviving spouse.

(2) Upon the death of HERBERT VanCONETT as the surviving spouse, Plaintiffs FLORIP, PETERSON and PARACHOS, had a vested interest in the property as named beneficiaries of the contract and as beneficiaries under the Will of HERBERT VanCONETT. It was not until HERBERT VanCONETT died that the contract beneficiaries had a vested right to receive said property "for themselves." It was at that point they filed the instant action to recover said property "for themselves" since the property had been conveyed or transferred in violation of the parties' contract.

(3) Similarly, FLOYD RAU, as Personal Representative of the Estate, has a cause of action to recover the property as an estate asset. (**MCL 700.3709**) It is his obligation as Personal Representative to see that the terms of HERBERT VanCONETT's Will are carried out, and in this instance, that means to recover property which rightfully belongs to the Estate.

For the reasons stated in Appellants' argument under Issue I. and as supplemented herein, the Will of HERBERT L. VanCONETT was irrevocable.

ISSUE IV.

IF HERBERT VANCONETT'S MUTUAL WILL WAS REVOCABLE, DID THE CONTRACT TO MAKE A WILL BETWEEN HERBERT AND ILA VanCONETT BECOME SPECIFICALLY ENFORCEABLE UPON ILA'S DEATH AS TO JOINTLY HELD PROPERTY, PASSING TO HERBERT L. VanCONETT BY OPERATION OF LAW UPON ILA VanCONETT'S DEATH?

Appellants assert the answer is, "Yes."

Appellees assert the answer is, "No."

The Court of Appeals asserted the answer is, "No."

It is an established principle of Michigan law that "...it is entirely competent for a person to make a valid agreement binding himself to make a particular disposition of his property by last will and testament." ***Bird v. Johnson, 73 Mich 483, 492; 41 NW 514 (1889)***

In the instant case, the Wills of both HERBERT and ILA VanCONETT establish such an agreement. The Will of HERBERT VanCONETT very clearly sets forth the terms of the agreement between them wherein he says:

> *"...that this Will is made pursuant to a contract or agreement entered into between my wife, ILA R. VanCONETT, and myself* ***for the purpose of disposing of all our property, whether owned by us as joint tenants, as tenants in common or in severalty, in the manner hereinabove in this, my Last Will and Testament, provided,*** ..." (Attachment H)

The Will of ILA VanCONETT very clearly sets forth the terms of the agreement between them wherein she says:

> *"...that this Will is made pursuant to a contract or agreement entered into between my husband, HERBERT L. VanCONETT, and myself* ***for the purpose of disposing of all our property, whether owned by us as joint tenants, as tenants in common or in severalty, in the manner hereinabove in this, my Last Will and Testament, provided,*** ..." (Attachment I)

The use of "all our property" to describe the property which is subject to the terms of the Will contract is clear and unambiguous. The Will contract language used by the VanCONETT's reveal and clearly express their intent that "*all our property*" includes jointly held property. Both Wills expressly state that the agreement between the parties is "*for the purpose of disposing of all of our property, whether* ***owned by us as joint tenants****, as tenants in common or in severalty.*" **MCL 554.43** specifically states that there are only three ways one can hold title to real and personal property in the State of Michigan, i.e. joint tenants, tenants in common or in severalty. The Wills of both HERBERT and ILA specifically reference all three methods of ownership.

In ***Schondelmayer, supra***, the Court found that "jointly" held property of a husband and wife was subject to the provisions of their joint mutual Will. In that case, Charles and Cathrin Schondelmayer executed a joint and mutual Will which provided that the ownership of all their property go first to the survivor and upon the survivor's death, then to their three sons. (Page 568) By the terms of that mutual Will, each of the three sons received, among other things, a designated farm. The Court specifically noted, "Title to the real property which the three sons were to receive was held jointly as tenants by the entirety by Charles and Cathrin." (Page 568)

Charles died and one of the sons then brought suit against his mother for specific performance of the contract contained in the mutual Will and also seeking injunctive relief whereby his mother would be restrained from disposing of property in violation of the terms of that joint mutual Will. The Trial

Court found that on the death of Charles Schondelmayer, said Will became irrevocable by the survivor, the Defendant Wife in that case. (Page 567) The Supreme Court affirmed the Trial Court's ruling stating:

> *"Our review of this record brings the conclusion that the trial judge was correct in determining that the will in suit was the joint mutual will of Charles and Cathrin Schondelmayer, executed by them pursuant to their agreement so to do, and in consequence of the death of Charles Schondelmayer it was thereafter not subject to revocation. The decree entered in the circuit court is affirmed in the above respect, and also as to the injunctive relief therein granted."* (Page 575)

Similarly, in ***Getchell v. Tinker, 291 Mich 267; 289 NW 156 (1939)***, the Court ruled that realty titled jointly in a husband and wife was subject to the terms of an agreement the Court determined was a mutual will contract. In ***Getchell, supra***, a husband and wife were the owners of real property as tenants by the entirety. On 12-11-22, at a time when they were estranged, they entered into a Property Settlement Agreement which contained the following provision regarding that real property:

> *"'It is mutually agreed that in the event of the death of one party hereto before the other, the title and ownership of the deceased party in and to property affected by this agreement, shall pass to and vest in the surviving party, during his or her natural lifetime and upon the death of said surviving party shall then vest in and belong to Walter Getchell son and sole heir of the parties hereto, if living, and in case he is then deceased, shall vest in and belong to the legal heirs of said Walter Getchell. . . **such disposition of said property is to be considered testamentary in character** and is one of the considerations of this agreement.'"* (at Page 268) (Emphasis Added)

The husband died 11-15-33 leaving a Will devising all of his property to his son, Walter C. Getchell. Walter died 3-17-38. The wife died 8-6-38 and her Will also devised the property involved in that suit to their son, Walter. However, two days prior to her death, the wife had executed a Warranty Deed of the

property to Defendant, Effie Tinker. Plaintiffs, sole legal heirs of Walter Getchell, deceased, filed a suit to cancel the deed, hold it null and void and have Defendants (Effie Tinker and her husband) release any interest they claimed to the subject property. The Trial Court entered a decree granting the relief prayed for by Plaintiff and Defendant, Effie Tinker, appealed.

Defendant argued that the instrument could not be construed as a joint and mutual Will claiming that there was no evidence of an existing agreement to make mutual Wills. In upholding the Trial Court's decision, the Court stated as follows:

> *"A reading of the document in its entirety is sufficient to disclose the existence of such an agreement. It clearly appears to have been the intention of the parties to make a contract, by the terms of which all property owned by them was to be disposed of as provided therein, paragraph 4 to become operative in the event of death of either party and to stand as a testamentary disposition of whatever interest one party might have upon the death of the other.* ***The contract incorporates therein the mutual will of the parties*** *and stands as sufficient evidence of the agreement in pursuance of which the will was executed.*
>
> ***Upon the death of Albert T. Getchell, his interest in the property passed to his wife as provided, and thereafter she had no power to make a disposition contrary to the provision of paragraph 4. The agreement underlying the mutual will became irrevocable, and a right of action for the enforcement of the agreement vested in plaintiffs as beneficiaries.***"(at Page 270) (Emphasis Added)

Appellees will rely on ***Rogers v. Rogers, 136 Mich App 125; 356 NW2d 288 (1984)***, for the proposition that jointly held property passed to HERBERT by operation of law upon ILA's death and, therefore, was not subject to the parties' Will contract. This reliance is misplaced. In that case, the Trial Court found that the subject jointly titled realty was not covered by the parties' joint Will. However, the Court also indicated that said property would have been covered under the joint Will if the Will

language had specifically so provided.

In ***Rogers, supra***, Charles and Faith Rogers were husband and wife who in 1956 entered into a Land Contract for the purchase of real property which land contract specifically recited that they were purchasing the property as "husband and wife, tenants by the entirety." Subsequently, in 1961, they executed a joint Will which provided in part:

> "SECOND, **It is the will and desire of each of us, and the mutual wish and desire of both of us**, that on the death of either of us, **all of the property of the deceased party, whether real, personal or mixed**, shall become the sole and separate property of the surviving party for his or her use so long as the survivor shall live.
>
> "THIRD, Upon the decease of the survivor of us, we give, devise and bequeath any remainder and residue of our property to the following people, in equal shares, share and share alike, except each husband and wife will take one share" (Page 128)

In ***Rogers, supra***, the Trial Court ruled that said Will was a joint mutual will "containing an aspect of contract" and covered all of the property that each owned. (Page 129) However, the Court found that the property held by Charles and Faith Rogers, as tenants by the entirety, "was outside of the joint and mutual wills, **was not covered by the wills** and did not pass by virtue of it." (Page 130) (Emphasis Added) However, the Court of Appeals states in its opinion:

> "However, in its analysis, the trial court also held that with respect to **property held** by Charles and Faith **as tenants by the entireties**, such as the farm, it **would** only **be included under the joint and mutual will if the language of the will specifically so provided**." (Emphasis Added) (Page 130)

The Court of Appeals then posed the question before it as follows:

> ". . . does the language employed in the joint will clearly indicate an intent to terminate and destroy the right of survivorship which inheres in the tenancy by the entireties." (Page 134)

The Court answered that question, "No" and stated:

> "Under the circumstances, we are not convinced that the parties intended to nullify the tenancy by the entireties and to have the farm pass under the will. On the contrary, we believe that by placing the ownership of the farm in their two names as tenants by the entireties, Charles and Faith Rogers intended that, upon the death of either, the farm would be owned solely by the survivor." (Page 136)

> "Under all of the circumstances present in this case, we are not inclined to disturb the findings of the trial judge. We do not believe that he clearly erred either in his findings or his analysis of the law and, consequently, we affirm the judgment." (Page 137)

In the instant case, however, the subject joint property is covered by the VanCONETT's Wills and the language of each Will does specifically provide for its inclusion. Specifically, each Will describes the property subject to the Will contract as "all our property, whether owned by us as joint tenants, as tenants in common or in severalty". The VanCONETT's intent to include "jointly" owned property under their Will contract is clearly expressed and unambiguous.

The Court of Appeals in its Opinion, on Page 4:

> "We disagree with plaintiffs' argument that the probate court erred in finding the real property passed outside **Ila's** will. Property held as joint tenants with full rights of survivorship automatically passes to the surviving tenant(s) at a tenant's death. . . . Because title passed instantly at Ila's death, it would not have been part of **her** estate and would not be covered by the couple's contract to make a will. Therefore, the estate has no right to seek its return. This is true even though the VanConetts wills purported to apply to 'all our property, whether owned by us as joint tenants, as tenants in common or in severalty.' Certainly, the VanConetts could not destroy the survivorship right through their wills because a will has no effect until the testator's death. The VanConetts' contract to make a will did not expressly indicate the couple wished to terminate their joint tenancy and destroy the survivorship rights attached to it. No authority suggests that merely expressing a desire to end a joint tenancy carries out the task of terminating a joint tenancy with rights of survivorship. Therefore, we conclude the VanConetts' wills did not terminate the survivorship rights of their joint tenancy. The property passed to Herbert immediate at Ila's death and the estate lacked standing to seek its return to the estate." (Emphasis Added)

Plaintiffs argued that the Probate Court erred in finding

that the real property passed outside **HERBERT's Will** - not **ILA's** Will as the Court noted. Plaintiffs do not dispute that the VanCONETT's jointly held property passed to HERBERT as the surviving joint tenant outside the Will of ILA and nothing needed to be probated. Once, however, ILA died, then the title to that "joint" property solely vested in HERBERT and became subject to the provisions of his Will contract dealing with the disposition of their joint property. It was and is Plaintiffs' position that HERBERT did not have a right to dispose of that property in a manner inconsistent with and in violation of the parties' contract.

Appellants have never asserted and do not claim that "the VanConetts could not destroy the survivorship rights through their wills" or that the VanConetts "wished to terminate their joint tenancy and destroy the survivorship rights attached to it." The VanCONETTs - by their act of contracting to dispose of all their property upon their respective deaths in a specified and agreed manner - did not terminate the joint tenancy of that property and/or change the property title in any way. While they were both alive, they had not given up any rights to either their separate and/or jointly held properties. While they were both alive, they both retained the right to rescind the contract. Had either done so, it would have put the parties back in the same position they were in prior to the contract ever having been made. However, the contract was not rescinded while they were both alive and, therefore, became irrevocable upon ILA's death.

The parties' contract did not sever the joint tenancy.

It was the act of ILA's death that severed the joint tenancy of the property - not the contract itself. At that point, the parties' "joint" property is now solely vested in the surviving joint tenant and the Will contract became irrevocable. From that point on, the beneficiaries of the contract have a vested right to see that the terms of that contract are carried out and/or enjoin the breach of that contract. Upon HERBERT's death, they have the additional vested right to the property which was subject to the terms of that contract, including the right to recover any property which had been conveyed, transferred, or gifted away in violation of that contract.

What needs to be made very clear is that no jointly held property is transferred by a decedent's Will. Only property in a decedent's name alone is conveyed by the Will's provisions. However, as in this case, much of that property which is in decedent's name alone consists of property which was once jointly held by decedent and his spouse and it is that property which is covered by the parties' contract.

For all the reasons stated above, Appellants assert that the Will contract between HERBERT and ILA VanCONETT became specifically enforceable as to jointly held property which passed to HERBERT VanCONETT by operation of law upon ILA's death.

RELIEF

Plaintiffs-Appellants respectfully request this Court to grant its Application for Leave to Appeal. Alternatively, Plaintiffs-Appellants request this Court to:

A. Summarily reverse the Probate Court's Order, dated February 25, 2003, granting summary disposition in favor of Defendant, MARIANNE DURUSSEL, and remand this matter to the Saginaw County Probate Court for entry of an Order Granting Plaintiffs' Summary Disposition on their Complaint against Defendant, MARIANNE DURUSSEL.

B. Summarily reverse the Probate Court's Order, dated March 24, 2003, granting summary disposition in favor of Defendant, ELIZABETH LEIDLEIN.

Dated this 4th day of May, A.D., 2005.

Respectfully Submitted,

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